
JUDICIAL OFFICERS: AUTHORITY & RESPONSIBILITY

MANDATE OF FUNDS Trial Rule 60.5

CONTACT:

Tom Carusillo

tom.carusillo@courts.IN.gov

Direct: 317-233-2779

251 North Illinois St., Suite 1600

Indianapolis, IN 46204

Main: 317-232-2542

When a court is denied funds reasonably necessary for the operation of the court or court-related functions, the judge of the court may seek to mandate the appropriation or payment of the funds pursuant to [Ind. Trial Rule 60.5](#). Prior to issuing an order to show cause why the appropriation or payment should not be made, the judge is required to meet with the mandated party and demonstrate the need for the appropriation or payment sought.

Once the order to show cause, captioned “Order for Mandate of Funds,” is issued, the judge shall promptly notify the Supreme Court so that a special judge can be appointed to hear the matter. Previously, the rule provided for the appointment of a judge or attorney from a non-contiguous county to serve as special judge. However, effective February 4, 2009, the procedure was amended and now the special judge is an attorney who: 1) is not a current or former regular judge, and 2) does not reside nor regularly practice law in the county where the mandate was issued or any contiguous county. In addition, the 2009 amendment provides that at any time during the process the dispute may be submitted to mediation by agreement of the parties or by order of the Supreme Court or the special judge.

The matter shall be set for trial on the merits of the order to show cause unless the legislative body, chief executive officer or affected officer files a written waiver of a trial and agrees to make the appropriation or payment. Trial of the matter is without a jury and a change of venue from the county or change from the special judge is not allowed.

If after a trial the special judge enters a decree or order mandating the appropriation or payment of funds, the matter is automatically reviewed by the Supreme Court unless the party subject to the mandate expressly waives review. The rule was also amended with regard to the payment of attorney fees. A mandate order made by a court other than the Supreme Court or the Court of Appeals may not assess attorney fees at a rate greater than the reasonable and customary hourly rate for an attorney in the county.

If the mandate results in the appropriation or payment of funds for the operation of the court or court-related functions, the amount must be reported on the court’s Report on Budget and Expenditures, using the INCite system. Because the amount resulting from the mandate was not covered by the original budget, the item, amount and related attorneys’ fees should be reflected on the report. The expenditure must be reported on the worksheet under both the appropriate line item and the “Mandated Funds” section. The Line # indicates where the expense was reflected on the worksheet and the Item indicates the category of expense. On INCite, some frequently mandated expense categories are provided in the drop down menu. If your expense is not listed, choose “other.” The actual amount mandated, rather than the amount requested, should be entered in the amount

column. If the court and/or county incurred legal fees in association with the mandate process, indicate the amounts incurred in the relevant columns to the extent known. Each instance of mandated funds is reported separately by clicking “add” to enter each one.

Examples of mandated fund categories include lengthy, expensive jury trials, unforeseen replacement of computer equipment, pauper attorney service, expensive guardian ad litem services and court interpretation fees. If your office did not incur a need for mandated funds, click the box “does not apply.” However, by choosing “does not apply,” all entries already made will be erased.

Last modified 6/19/18